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No. 87-5840

In The

Supreme Court of the United States

October Term, 1988

EDWARD McNAMARA,

Appellant,

v.

COUNTY OF SAN DIEGO,
DEPARTMENT OF SOCIAL SERVICES,

Appellee.

ON APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION ONE

APPELLANT'S REPLY BRIEF

JAMES E. SUTHERLAND
3711 Long Beach Blvd., Suite 718
Long Beach, CA 90807
(213) 426-0425

Counsel for Appellant

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

1. THE COURT HAS JURISDICTION AND THE RULE APPELLEE WANTS ADOPTED WOULD BE IMPRACTICAL AND BURDENSOME TO THE COURT 1

2. TERMINATION OF PARENTAL RIGHTS AND EQUAL PROTECTION ARE THE ISSUES PRESENTED 3

   A. Katie's custody is not at issue before the Court, nor will it necessarily change if the judgment terminating Edward's parental rights is reversed and remanded 3

   B. Having crossed the threshold to protected parenthood, Edward is entitled to the same protection as other protected parents 4

3. EDWARD IS NOT AT FAULT FOR DELAYING HIS COMMITMENT TO KATIE OR THE JUDICIAL PROCESS 6

   A. The County's contention that Edward was required to file a petition and could have thus stopped the adoption overlooks the law 6

   B. Edward committed to Katie promptly 9

4. THE COUNTY IS TRYING TO AVOID THE ISSUES 12

   A. No absolute veto over adoptions is sought for anyone, let alone all unwed fathers 12

   B. The County is trying to raise potential due process problems not presented on the record 14

TABLE OF CONTENTS—Continued

Page

5. NO IMPORTANT STATE INTEREST IS SERVED BY THE DISPARATE TREATMENT 15

A. An important state interest must be served to justify the discrimination under the heightened scrutiny test 15

B. California did not find a basis for sex discrimination 16

C. Governmental policy does not require, or permit, overriding competent parents in favor of third-party adoptions 17

D. The arguments favoring adoption lack merit 19

CONCLUSION 20

TABLE OF AUTHORITIES

Page

Caban v. Mohammed, 441 U.S. 380 (1979) 5

Griffith v. Gibson, 73 Cal.App.3d 465, 142 Cal. Rptr. 176 (1977) 4, 8

In Interest of McLean, 725 S.W.2d 696 (Tex. 1987) 17

In re B. G., 11 Cal.3d 679, 114 Cal.Rptr. 444, 523 P.2d 244 (1974) 4

In re Tricia M., 74 Cal.App.3d 125, 141 Cal.Rptr. 554 (1977), *cert. den.*, 435 U.S. 996 (1978) 4, 8, 17

Lehr v. Robertson, 463 U.S. 248 (1983) 5, 19

Miss. Power & Light v. Miss. ex rel. Moore, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988) 1

New York v. Cathedral Academy, 434 U.S. 125 (1977) 2

Quilloin v. Walcott, 434 U.S. 246 (1978) 19

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945) 1

Santosky v. Kramer, 455 U.S. 745 (1982) 5, 18

Stanley v. Illinois, 405 U.S. 645 (1972) 18

TEXTS:

A. Huxley, *Brave New World Revisited* 28 (Perennial Library, Harper & Row, N.Y., 1958, 1965) 11

Stern, Gressman & Shapiro, *Supreme Court Practice* 132 (6th ed. 1986) 2

5 B. Witkin, *Cal. Procedure*, Pleading, § 1142, pp. 557-559 (3d ed. 1985) 7

TABLE OF AUTHORITIES—Continued

	Page
CODES AND RULES:	
Cal. Civil Code, § 224	3, 20
Cal. Civil Code, § 229	4, 19
Cal. Civil Code, § 232	3, 16, 20
Cal. Civil Code, § 4600	4
Cal. Civil Code, § 7006(e)	7, 8, 9
Cal. Civil Code, § 7010(e)	4
Cal. Civil Code, § 7017(d)	5, 7, 8, 9
Cal. Rules of Court, Rule 19.3	8
Cal. Rules of Court, Rule 39(e)	8

1. THE COURT HAS JURISDICTION AND THE RULE APPELLEE WANTS ADOPTED WOULD BE IMPRACTICAL AND BURDENSOME TO THE COURT

"Very few situations" permit review of state-court decisions where further proceedings remain to be determined in a state court. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945). Appellee has cited none applicable at bar. Indeed, Appellee totally ignores several cases establishing jurisdiction submitted by Appellant. Brf.Aplt. 6-7.

The California Supreme Court remanded for review on the merits. A factual ruling favorable to Edward would have mooted his whole appeal. He was not truly an aggrieved party with standing until he lost the second time. Further, as debated by the California Court of Appeal, the definition of the best interests test with a required finding of detriment to the child from parental custody could have been grounded on constitutional standards in a parental rights termination case. It could have required a finding of something wrong with the father. Previous applications of the standard had been in custody cases.

With that constitutional issue, the definition of best interests/detriment, open, the federal legal issues had not all been decided. Requiring appeal in such a situation would force work on the Court when factual issues and constitutional issues remain to be resolved below; when the case might disappear in the further proceedings.'

It was not a situation where a ruling here could have terminated all proceedings, *Miss. Power & Light v. Miss. ex rel. Moore*, 108 S.Ct. 2428, 2438, n. 11, 101 L.Ed.2d 322.

337, n. 11 (1988), nor one where only ministerial acts remained and "no possible developments on remand could sufficiently minimize the risk of future constitutional harm to justify relief * * * Since further proceedings [could not] remove or otherwise affect this threshold federal issue the Court of Appeals' decision [was] final for purposes of review in this Court." *New York v. Cathedral Academy*, 434 U.S. 125, 128, n. 4 (1977).

> "(I)f the judgment does in fact contemplate further discretionary action on remand, this judgment is not final and cannot be reviewed by the Supreme Court even though the state court conclusively adjudicates the federal issues. Only after the highest state court renders another judgment on appeal from the additional discretionary action of the lower court following remand may review be had." Stern, Gressman & Shapiro, *Supreme Court Practice* 132 (6th ed. 1986).

> "It is one thing to hold that a litigant may seek early review of a state court decision because otherwise the federal constitutional issue might disappear or be eroded. But it is quite a different matter to hold that a litigant is precluded from review if, having carefully preserved his constitutional claims on the remand, he waits for the end of the state court litigation before bringing his federal claims to the Supreme Court. Finality is too practical a doctrine to be turned into such a trap for litigants and such an erosion of the Court's jurisdiction to pass on substantial federal claims in state court cases. Nothing in the Court's decision in *Cox*, or related cases, suggests that this result is mandated by the finality doctrine, as now interpreted." *Id.*, at 133.

Appellee's bright-line rule would force resort to the Court on many cases where further proceedings in lower courts could eliminate the case. It is not practical.

Having correctly conceded that the issues were passed upon below, Brf.Aplee. 10, and having demonstrated no reason why the Court cannot rule, Appellee has failed to raise any meritorious objection to jurisdiction. The Court should proceed to the merits.

2. TERMINATION OF PARENTAL RIGHTS AND EQUAL PROTECTION ARE THE ISSUES PRESENTED

A. Katie's custody is not at issue before the Court, nor will it necessarily change if the judgment terminating Edward's parental rights is reversed and remanded

Edward asks the Court to reverse the judgment terminating his parental rights and to direct the trial court to terminate his parental rights only if he is found to come within section 224 or 232. That is, essentially, unless he is unfit (incapable as a parent) or has neglected or abandoned Katie. That would give him equal treatment with other fathers, wed and unwed, who have crossed the threshold to fatherhood and with mothers.

The California courts have consistently held that these tests cannot be met as to Edward. J.S. 6a, 49a. It is unlikely anything will have changed since; he certainly has not abandoned Katie through seven years of litigation.

That will mean the attempted adoption was invalid and Edward's parental rights will be preserved. No adoption will be permissible without his consent, and he will be able to seek custody, visitation, pay support, and be a full participant in Katie's life.

> "The judgment or order may contain any other provision directed against the appropriate party to

> the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement." Cal. Civil Code, § 7010(c).

The test for custody and visitation will be the best interests of Katie, with Edward getting the benefit of parental preference. § 4600, J.S. 70a; *Griffith v. Gibson*, 73 Cal.App.3d 465, 474, 142 Cal.Rptr. 176 (1977); *In re Tricia M.*, 74 Cal.App.3d 125, 137, 141 Cal.Rptr. 554 (1977), *cert. den.*, 435 U.S. 996 (1978); see also, *In re B. G.*, 11 Cal.3d 679, 696, 114 Cal.Rptr. 444, 523 P.2d 244 (1974) (several custody proceedings available, all with parental preference).

On remand, all parties will be entitled to due process and equal protection. In view of events, it is not likely that Edward will get custody. But he can still develop, or have the opportunity to develop, a father-daughter relationship. Otherwise, he is completely out of the picture, all rights having been terminated. § 229.

B. Having crossed the threshold to protected parenthood, Edward is entitled to the same protection as other protected parents

No mother in California—or anywhere else in the United States—could lose her parental rights just because custody at the time with someone else was in the child's best interests. No presumed father in California could, either.

Edward promptly came forward (under California law and on the facts as litigated below) and sought to assume

full parental responsibility. Contrary to the County's assertions that he did not then and does not now seek custody and full parental rights, Brf.Aplee. 24, 31, 37, the facts show Edward's vigorous pursuit of those responsibilities for seven years, and counting. Brf.Aplt. 10-16. If he had not sought custody, he could not have tried to stop the adoption; that was the issue under the statute. § 7017 (d), J.S. 72a.

Edward has demonstrated a full commitment (few could demonstrate more) and came forward promptly to participate in rearing Katie. He did all he could under the circumstances. J.S. 12a. Nothing, legally or factually, showed he should have been deprived in 1981. J.S. 49a. He is entitled to substantial protection, but was denied even opportunity. *Lehr v. Robertson*, 463 U.S. 248, 261-262 (1983).

The amorphous and debatable custody standard, the best interests test, is significantly different from the specific facts which must be proved against other protected parents. The propriety of terminating parental rights in the best interests of the child is an issue reserved by the Court. *Caban v. Mohammed*, 441 U.S. 380, 394, n. 16 (1979). (The Court hardly "implicitly approved" the test in *Santosky v. Kramer*, 455 U.S. 745, 760, n. 10 (1982), as the trial court refused to terminate on a no-fault basis and the Court expressed doubts about using such a standard.) Here it is the difference, a highly prejudicial difference, that is presented as an issue on equal protection grounds.

Edward was identified as the father and adjudicated to be the father. The mother relinquished Katie. Edward came forward to be the fully committed parent, and the

County spirited Katie away. The County and its row of *amici* from the adoption industry rely on that possession as 100 points of the law, to allow them to prevent a relationship from forming, if they deem that best. The conduct was unjustified. J.S. 16a-21a.

The judgment permitting adoption without Edward's consent should be reversed. A clear message should be sent establishing the rights of fathers who have crossed the threshold to a protected parental interest.

3. EDWARD IS NOT AT FAULT FOR DELAYING HIS COMMITMENT TO KATIE OR THE JUDICIAL PROCESS

A. The County's contention that Edward was required to file a petition and could have thus stopped the adoption overlooks the law

First and foremost, the pleading requirements are issues of state procedure and practice. The County never raised the claim below. The California Supreme Court held that Edward had followed the available procedure and fully protected his legal rights:

> "(I)f the father is merely a natural father and not a presumed father, the mother alone is entitled to the child's custody. *Only when the natural mother relinquishes the child for adoption* do the natural father's rights commence. (§ 7017, subd. (d).) He is to be notified and his custodial rights, if claimed, determined before the adoption can proceed." J.S. 43a, footnote omitted, emphasis original.

> "In the context of section 7017, the mother must relinquish the child for adoption before the natural father has any rights." J.S. 44a.

The Court of Appeal agreed: "Edward appears to have done everything he reasonably could have to establish a parent-child relationship with Katie." J.S. 12a.

Edward had an option to file a petition or wait to oppose the petition the County proposed to file, according to the adoption worker who undertook to give him legal advice. Nothing was said about different effects from one course or the other. Brf.Aplee. 2-3. That option was available, and Edward had 30 days after the County filed to make his claims to paternity and to custody. § 7017(d), J.S. 72a. He was prompt. J.S. 18a.

Edward filed *pro se* asking for full affirmative relief as described in sections 7006(c) and 7017(d): retention of parental rights and legal and physical custody of Katie. J.A. 5. No objection was ever raised to the timeliness or sufficiency of the pleading. Brf.Aplt. 11, n. 4.

Throughout two trials and appeals, the issue was Edward's right to custody, with that he would retain parental rights. All issues were litigated by consent and the County's challenge cannot be heard now. 5 B. Witkin, *Cal. Procedure,* Pleading, § 1142, pp. 557-559 (3d ed. 1985). For all purposes at trial and on appeal Edward's request for affirmative relief was treated as a section 7006(c) request as required by section 7017(d).

Second and very important, no matter how and when raised, the ultimate issue was Edward's right to custody, necessary to stop the adoption. (A 7006(c) petition would stay the adoption while pending, but not stop it, unless, that is, he got custody and became a presumed father. The court could try the same custody issue first under section 7017(d) and did so, giving the same practical result.) If

he had filed first and failed to get custody, the ruling might have prevented him from getting custody and stopping the adoption. Ordinary *res judicata* and collateral estoppel principles would have applied. The custody determination standards are the same regardless of the procedural niceties and who filed first. J.S. 42a; *In re Tricia M.*, 74 Cal.App.3d 125, 136-137, 141 Cal.Rptr. 554 (1977), *cert. den.*, 435 U.S. 996 (1978). No different result would have come from Edward's being the first in time.

In contrast, a judgment giving him visitation and a support obligation would not necessarily have got him custody and presumed father status. *Griffith v. Gibson*, 73 Cal.App.3d 465, 469, 472-473, 142 Cal.Rptr. 176 (1977). Thus, a 7006(c) petition would not necessarily have resolved the custody issue, forcing full proceedings anyway after a 7017(d) petition was filed.

The County's claim that Edward failed to pursue necessary state remedies is contrary to state law and law of the case.[1]

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[1] *Amicus* Barker Foundation blames Edward for failure to request an "expedited appeal." Brf.BarkerFdn. 4, n. 3. No authority is cited for such a procedure in California; there is none. Once the record reaches the appellate court, a motion may be made for calendar preference, Cal. Rules of Court, Rule 19.3, but that does not advance preparation of the record in the trial court or even shorten the briefing times. Rule 39(e), Cal. Rules of Court, is largely precatory and self-operating. *Amicus* remains blissfully unaware of California practices and calendars. The delays belong not to Edward, but to the courts, as the Court of Appeal confessed. J.S. 13a, 15a, n. 1.

Of course Edward contends that he was denied equal protection because his parental rights were terminated on transient custody grounds. He submits his rights could constitutionally be terminated only for unfitness, neglect, or abandonment. Therefore, custody should not have been the issue whether under section 7006(c) or section 7017(d).

Because custody was an unconstitutionally considered issue (until the termination of parental rights issue was properly determined), he should not have had to plead for custody relief. It makes no difference if, or how, or when custody was claimed, except to show Edward demonstrated full parental commitment. The County's pleading issue is irrelevant to the equal protection issues presented.

E. Edward committed to Katie promptly

After first learning of Katie's birth on August 1st, Edward contacted the adoption worker on August 3rd and made an appointment for August 5th which he kept. He consistently refused to give up his legal rights while considering this major development in his life. The adoption worker who undertook to advise him, Brf.Aplee. 2-3, did not tell him he had any time limits or that he must immediately request custody or lose his rights—the position the County now argues.

On August 17th, after carefully considering his situation and his and Katie's future—and after seeing her for the first time and learning he might never see her again—he requested custody. That was before Katie was one-month old, seventeen days after the surprising news, and twelve days after he first talked to the adoption worker.

It was also seven days *before* Katie was placed with prospective adoptive parents—the placement the County and *amici* rely on to subplant the constitution. J.S. 16a-18a; Brf.Aplt. 9-11. Katie was never in limbo, uncared for. She was with the County from leaving the hospital. Brf.Aplt. 10. Asking sooner would have brought the same treatment.

All of these arguments were made below. They were ignored by the lead opinion, but expressly rejected in the concurring opinion. J.S. 21a-22a.

The state court's treatment is significant. The issue first is a fact question to be reviewed on the record; no state law required faster action. As a question of law, it is a matter of state adoption policy. If the state courts see no factual or legal basis for requiring absolutely immediate response (and preventing mature consideration) there is no constitutional requirement. (Much of the adoption proponents' theory would require California to impose restrictions on unwed fathers it has not seen appropriate, e.g., faster responses, shorter pleading times.[2])

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[2] Given their premises, the adoption proponents would elevate adoption and its processes to a constitutional status above parenthood, subordinating all to an efficient system allowing the adoption lawyers and workers to place children where they felt best.

Is is easy to become zealous for a cause, or money, or a job, and to become myopic, if not self-satisfied. Aldous Huxley captured the essence of the danger:

> "There seems to be a touching belief among certain Ph.D.'s in sociology that Ph.D.'s in sociology will never be corrupted by power. Like Sir Galahad's, their strength is as the strength of ten because their heart is pure—and their heart is pure because they are scientists and have taken six thousand hours of social studies.

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California decided Edward had acted properly and there was no reason to deny him full parental rights and custody in 1981. That should settle the claim that he did not respond quickly enough in August of 1981.

The County is still trying to hold Edward's exercise of mature judgment against him by arguing he does not now seek custody and has abandoned any interest in her. Brf.Aplee. 24, 31, 37. But he has always sought custody. J.A. 5; Brf.Aplt. 12-16. He just recognizes that custody and the father-daughter relationship must come slowly now because of the interruption by the County; a transition is needed now and full custody might not be available no matter how much he desires it. That is a demonstration of his mature judgment and concern, not an abandonment.

The County's argument is nonsense. Only by retaining parental rights may he ever seek custody; visitation is part of the custody powers of the court. It is the forcible separation of Edward from Katie and she from him that has altered—created—the whole situation past and present. Edward did not abandon Katie—ever.

Curiously, the County argues that the Katie-Moseses relationship should be given so much deference that it

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> Alas, higher education is not necessarily a guarantee of higher virtue, or higher political wisdom." A. Huxley, *Brave New World Revisited* 28 (Perennial Library, Harper & Row, N.Y., 1958, 1965)

That is not to denigrate integrity, just to caution against special interests under color of impartial expertise, bent on doing good even where it is not needed.

overcomes Edward's constitutional right to know Katie and her constitutional right to know him, but when Edward gives some recognition to that relationship artificially created by the County they say Edward has abandoned his rights.

California found that Edward should have been given custody and full parental rights at the 1981 trial when Katie was five months old. A delay of a few days in demanding custody (while refusing to surrender his rights), if that qualifies as delay, and asserting his rights within the allowed time to plead was not harmful to anyone, including Katie. Edward did not fail to timely commit to fatherhood.

4. THE COUNTY IS TRYING TO AVOID THE ISSUES

A. No absolute veto over adoptions is sought for anyone, let alone all unwed fathers

The County and its supporters diligently try to make the case into something not presented on the facts or the briefs. They strive to convince the Court that ruling for Edward would give *all* unwed fathers an *absolute veto* over any adoption. Brf.Aplee. ii, 9; Brf.BarkerFdn. i(2), 12; Brf.Natl.Com. 1.[3]

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[3] A brief was also filed by Christian R. Van Deusen purporting to represent Katie (who is not a party to the proceedings here or below) *amicus curiae* and making a motion to dismiss or affirm, quite a bit late. Assuming the Court treats this document as an *amicus* brief in support of Appellee, it essentially says that the California statute is constitutional because California likes it. But that begs the question which is whether California may enforce the statute against men situated sim-

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No such issue is presented. No such rule would follow from reversing the judgment at bar on equal protection grounds.

Edward does not even suggest that *all* unwed fathers should be in the same position he is in. To the contrary, he distinguishes himself from those who show no interest and have not crossed the threshold to a protected parental interest. He has manifested significant interest to the full extent the facts and law allowed. J.S. 12a. He has been wrongly put in the same category as those who show no interest and lost parental rights. He is wrongly in the same class as the unwed fathers who cannot be found; that is the heart of his case.

Further, he does not request an "absolute veto" of anything. His rights still could be terminated; it just would have to be done on the same grounds as apply to other parents with a protected interest under the statutes (perhaps parents with even less real parental interest in their child). That is not a veto. It gives no weapon, or undue advantage, or ability to interfere capriciously. (On the other hand, the County supports the absolute veto given to all mothers, regardless of actual interest, despite the obvious discrimination.)

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ilarly to Edward. It also addresses issues, like veto power for all, not raised by Edward, perhaps because the brief was filed at the time the Brief for Appellant was filed. Otherwise, the document is a "me, too" exercise favoring easy adoption and plenty of adoptable babies to be placed by lawyers or agencies.

Their closest statement to the real issues at bar is Appellee's Question IV: May states distinguish between fathers "manifesting unequivocal concern" for their children and those fathers who do not? Brf.Aplee. i. If Edward had been given that treatment as one who showed such interest, the case would not be here. He manifested that concern but was treated as one who did not.

All California courts have agreed that he manifested significant interest in taking full parental responsibility—necessary to even get into court—and that he should have had custody. Yet, he was denied any parental rights. He was lumped with unwed fathers who show no interest. He was classed with a group to which he did not belong under a presumption that he would not show interest in his child. Brf.Aplt. 33-35.

Their insistence on arguing against strawmen is but a device to avoid addressing the issues.

B. The County is trying to raise potential due process problems not presented on the record

Much of the County's brief is devoted to due process arguments. Brf.Aplee. 19-37. Typically, Appellee wants to change the case. The County apparently feels more comfortable avoiding the denial of equal protection—which no one really denies was denied—and addressing a multitude of issues not presented by the facts.

Fears are expressed about not knowing who the father is or not being able to find him. But Edward was known, was found, said he was the father, and was adjudicated the father by stipulation. Brf.Aplt. 11.

The finality of judgments rule will preserve completed adoptions. Many states already require what Edward requests, termination on unfitness, etc., grounds. California already gives the right to notice and a hearing, as do other states. In sum, the specters raised are not realistic and are not impediments; nor are they presented at bar.

Edward is getting processed well beyond what is due. What he and Katie (she has a right to know her father) desire is equal protection. The denial of equal protection is clear in the differing standards for mothers and for other unwed fathers, presumed fathers, many of whom may have manifested much less interest than Edward.[4]

5. NO IMPORTANT STATE INTEREST IS SERVED BY THE DISPARATE TREATMENT

A. An important state interest must be served to justify the discrimination under the heightened scrutiny test

Edward was treated significantly differently from all mothers and presumed fathers. There really is no challenge to that premise. He also had acquired a protected interest. The County wrongly claims that he never sought custody and argues that he delayed too long while considering requesting custody. But he acted within the time re-

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[4] Most of the cases in the field hold on both due process and equal protection, so it is hard to avoid cases which discuss due process. Brf.BarkerFdn. 10, n. 5. The Court is most sensitive to equal protection where denial deprives a party of due process rights. But the overly-broad class and disparate treatment here are better defined on equal protection analysis.

quirements of law and California found no harm or undue delay in fact. The defenses are specious, at best.

That leaves the issue of whether the disparate treatment bears a substantial relationship to achieving important governmental interests, with a persuasive justification. Brf.Aplt. 27-28. The adoption industry finds the state interests in quick placement and saving mothers from embarassing or difficult decisions.

B. California did not find a basis for sex discrimination

The critical point is that California never justified the discrimination. It is California's adoption policy and its state interests which must be served. California gives notice to fathers and hearings. So slowing of the process by hearings is not an issue. (With specific proof required situations might be handled faster. Cases could be evaluated on the facts without open-ended psychological testimony in nearly every "best interests" case.)

Quick permanent placement is not an issue when the mother's rights are being terminated. Even newborns must have been abandoned for six months, § 232(a)(1), Brf. Aplt.S.A. 3b, and reunification must be attempted. § 232 (a)(7), Brf.Aplt.S.A. 7b.

Moreover, the state interest is not in adoption, but in parental rights:

> "'(I)n our rush to insure the stability and efficiency of the adoption process, it is apparent that the rights of the parties involved—particularly the unwed father—may well suffer. • • • (I)t makes no more sense

> to insist that all unwed fathers are disinterested and unfit parents than it does to continue in the belief that all mothers are by nature interested in raising children.'" *In re Tricia M.*, 74 Cal.App.3d 125, 135, 141 Cal.Rptr. 554 (1977), *cert. den.*, 435 U.S. 996 (1978).

The California Supreme Court embraced this view and rejected the distinction between mothers and fathers:

> "The actions of *both* parents after the birth of their child determine their ability to accept parental responsibility. An unwed mother may have had no more desire to conceive or knowledge of the conception than the unwed father. Nevertheless she is given a choice to keep or relinquish the child because she gave birth. Her decision to release the child for adoption should not deprive the father of a meaningful opportunity to retain and develop his relationship." J.S. 48a-49a.

Certainly the relief Edward seeks would not imperil mothers or adoptions as far as California is concerned. California's law should not be rewritten by this Court to please Appellee.

C. Governmental policy does not require, or permit, overriding competent parents in favor of third-party adoptions

Appellee and its cadre find support for the obvious sex discrimination in the fact that seventeen states have adopted some version of the Uniform Parentage Act, but California's version is unique. Brf.Aplee, 15, n. 11; Brf.Barker Fdn. 2, n. 2. There is no national consensus supporting the County's position.

Several states require proof of unfitness to terminate the rights of an unwed father. Brf.Aplt. 39-40. The Texas law relied upon to vindicate quick adoptions, Brf.Aplee. 42-43; Brf.Natl.Com. 11-12, was overruled. Notice and hearing on equal footing are now required to terminate. *In Interest of McLean*, 725 S.W.2d 696 (Tex. 1987) (no "best interests" sex discrimination, at 698).

The several policies the County contends require favoring adoptions are also served by placement with an able, caring parent. This father has demonstrated a "legal and moral commitment to fatherhood" (having crossed the threshold), Brf.Aplee. 43, and custody with Edward would eliminate the need for any state guardianship; the father would have willingly taken the burden of parenthood. Surely, his "opportunities to develop and enjoy deeply satisfying parent-child relationships," Brf. BarkerFdn., 11, are at least as important as those of childless couples. Most of us think more so.

Katie also has a right to know and love her father and to get his emotional and financial support.

Again, there is no special right for the adoption process. It is a beneficial institution, but only when the biological family cannot be maintained. J.S. 20a-21a. The state registers no gain when it separates children from the custody of fit parents. J.S. 20a, citing U.S. cases. "(T)he State's goal is to provide the child with a permanent home," *Santosky v. Kramer*, 455 U.S. 745, 766, not just an adoptive home. The State's interest is *de minimis* if the father is fit. *Stanley v. Illinois*, 405 U.S. 645, 657-658 (1972).

This mother had, it should be remembered, elected out of parenthood, and Edward was available for quick, beneficial, permanent placement.

Making adoption easier does not justify the discrimination. Indeed, the argument is merely another version of making life easier by presumption, an approach rejected in *Stanley, supra*.

D. The arguments favoring adoption lack merit

The County makes several miscellaneous arguments, but none have merit.

If easy adoption is the goal, why should either parent have to consent? Let the decision makers choose.

If possession is the key, why have hearings at all?

It takes gall to argue that Edward failed to develop a relationship with Katie when she was spirited away and Edward was deprived of contact, even the right to pay support. J.S. 19a; § 229. If the Court protects only relationships developed for at least two years, no unwed father could achieve parenthood of a newborn or an infant, even when the mother relinquishes. The mother and the state would have absolute control; it defies reason. J.S. 19a-20a.

Every fear of nefarious scheme or spite could apply to mothers, too.

Every argument for dispensing with a father's consent can be used to dispense with a mother's consent. Every good to be legitimately claimed from adoption will be met by placement with an able and loving father. Their arguments prove too much.

No mother will be forced to keep an unwanted child; this one was not. Nor should a mother's embarassment at having the child's birth known be given greater constitutional status than the rights of the father and the child. The Court simply is not in the business of promoting adoption above parenthood nor increasing the supply of adoptable babies.

This is not a stepparent adoption as in *Quilloin v. Walcott*, 434 U.S. 246 (1978) or *Lehr*.

The emotionally-charged arguments lack merit.

CONCLUSION

The choices the County wants unwed mothers to avoid and the impediments to easy adoption feared by

the adoption advocates already arise in California (and most states): the process is slowed by notice and hearing; the unwed father may get custody contrary to the mother's wishes. California and most other states find no problems with recognizing those rights.

Edward achieved a protected interest and should not be categorized with fathers who show no interest. The question is then: Once a father with a protected interest gets notice and hearing, on what grounds may his parental rights be terminated? Edward submits: Only on the same grounds as other parents with protected interests; in California under sections 224 and 232.

On remand, the court will consider custody and visitation as well as support. The trial court found Edward a good and loving father and encouraged contact. J.S. 5a. All experts agreed that some contact would benefit Katie, although extent and circumstances were subject to differing opinions. There is no reason to expect that Katie would be harmed; she would benefit. Anyway, future relations will be subject to court order. But a clear message should be sent to adoption agencies and courts that the conduct exhibited here is unacceptable.

The classification and grounds used to terminate Edward's parental rights denied him equal protection of the law. The judgment terminating parental rights should be reversed.

Respectfully submitted,

JAMES E. SUTHERLAND
Counsel for Appellant